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HUMAN RIGHTS COMMITTEE
Seventy-fifth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

NEW ZEALAND

1. The Committee considered the fourth periodic report of New Zealand (CCPR/C/NZL/2001/4 and HRI/CORE/1/Add.33) at its 2015th and 2016th meetings, held on 9 and 10 July 2001 (see CCPR/C/SR.2015 and 2016) and adopted the following concluding observations at its 2026th meeting (CCPR/C/SR.2026), on 17 July 2002.

A. Introduction

2. The Committee expresses its appreciation to the State party for its excellent report, which contains detailed information on the law and practice relating to the implementation of the Covenant and is in accordance with the Committee's guidelines. However, it regrets the delay in submitting the report.

3. The Committee notes with appreciation that the report contains useful information on developments since the consideration of the third periodic report, as well as responses to the concerns expressed by the Committee in its concluding observations on the previous report. The Committee also welcomes the written responses given to the Committee's written list of questions.

B. Positive aspects

4. The Committee welcomes the Consistency 2000 exercise - the examination by the New Zealand Human Rights Commission of all acts, regulations, government policies and administrative practices with a view to determining whether they are consistent with the anti-discrimination provisions of the Human Rights Act. It further welcomes the audit process undertaken by the Government to identify and resolve the inconsistencies between the Human Rights Act and legislation, regulations, government policies and practices, known as Compliance 2001.

5. The Committee notes with satisfaction that in the determination of cases the New Zealand courts take account and are aware of the obligations undertaken by the State party under the Covenant and of the Committee's general comments.

6. The Committee welcomes the enactment of:

(a) The Parental Leave and Employment Protection (Paid Parental leave) Amendment Act 2002;

(b) The Human Rights Amendment Act 2001;

(c) The Employment Relations Act 2000; and

(d) The Domestic Violence Act 1995.

7. The Committee welcomes the further progress made in the protection and promotion of the rights of Maori under the Covenant, in particular the amendments introduced by the Maori Reserved Land Amendment Act which came into force in 1998. In this respect, the Committee notes with satisfaction that the Act provides for compensation to be paid to lessors for delays in carrying out rent reviews and to ensure fair annual rents, and providing for compensation to be paid to (largely non-Maori) lessees under certain circumstances. The approach of providing compensation from public funds helps to avoid tensions that might otherwise hamper the recognition of indigenous land and resource rights.

C. Principal subjects of concern and recommendations

8. Article 2, paragraph 2, of the Covenant requires States parties to take such legislative or other measures which may be necessary to give effect to the rights recognized in the Covenant. In this regard the Committee regrets that certain rights guaranteed under the Covenant are not reflected in the Bill of Rights, and that it has no higher status than ordinary legislation. The Committee notes with concern that it is possible, under the terms of the Bill of Rights, to enact legislation that is incompatible with the provisions of the Covenant and regrets that this appears to have been done in a few cases, thereby depriving victims of any remedy under domestic law.

The State party should take appropriate measures to implement all the Covenant rights in domestic law and to ensure that every victim of a violation of Covenant rights has a remedy in accordance with article 2 of the Covenant.

9. The Committee regrets that the State party does not consider it necessary to include in the prohibited grounds of discrimination all the grounds stated in the Covenant, in particular, language, although in New Zealand language has been interpreted as an aspect of race.

The State party should revise its domestic law in order to bring it into full conformity with the provisions of articles 2 and 26 of the Covenant.

10. With regard to the possible impact of the punishment of preventive detention upon article 15 rights in conjunction with other articles of the Covenant, the Committee has received a written answer from the State party after the close of the dialogue. However, the Committee still has some concerns and looks forward to pursuing its dialogue with the State party further on this issue.

The State party should deal fully with this issue in its next periodic report and should inform the Committee of any relevant further developments.

11. The Committee recognizes that the security requirements relating to the events of 11 September 2001 have given rise to efforts by New Zealand to take legislative and other measures to implement Security Council resolution 1373 (2001). The Committee, however, expresses its concern that the impact of such measures or changes in policy on New Zealand's obligations under the Covenant may not have been fully considered. The Committee is concerned about possible negative effects of the new legislation and practices on asylum-seekers, including by "removing the immigration risk offshore" and in the absence of monitoring mechanisms with regard to the expulsion of those suspected of terrorism to their countries of origin which, despite assurances that their human rights would be respected, could pose risks to the personal safety and lives of the persons expelled (articles 6 and 7 of the Covenant).

The State party is under an obligation to ensure that measures taken to implement Security Council resolution 1373 (2001) are in full conformity with the Covenant. The State party is requested to ensure that the definition of terrorism does not lead to abuse and is in conformity with the Covenant. In addition, the State party should maintain its practice of strictly observing the principle of non-refoulement.

12. The Committee is concerned at information that permanent residents of New Zealand and, under certain conditions, even some citizens need a return visa to re-enter New Zealand, as this may raise issues under article 12, paragraph 4, of the Covenant.

The State party should review its legislation to ensure compliance with article 12, paragraph 4, of the Covenant.

13. The Committee notes with concern that the management of one prison and prison escort services have been contracted to a private company. While welcoming the information that the State party has decided that all prisons will be publicly managed after the expiry of the current contract in July 2005 and that the contractors are expected to respect the United Nations Minimum Standards for the Treatment of Prisoners, it nevertheless remains concerned about whether the practice of privatization, in an area where the State is responsible for protecting the rights of persons whom it has deprived of their liberty, effectively meets the obligations of the

State party under the Covenant and its own accountability for any violations. The Committee further notes that there does not appear to be any effective mechanism of day-to-day monitoring to ensure that prisoners are treated with humanity and with respect for the inherent dignity of the human person and further benefit from treatment, the essential aim of which is directed to their reformation and social rehabilitation.

The State party should ensure that all persons deprived of their liberty are not deprived of the various rights guaranteed under article 10 of the Covenant.

14. While recognizing the positive measures taken by the State party with regard to the Maori, including the implementation of their rights to land and resources, the Committee continues to be concerned that they remain a disadvantaged group in New Zealand society with respect to the enjoyment of their Covenant rights in all areas of their everyday life.

The State party should continue to reinforce its efforts to ensure the full enjoyment of the Covenant rights by the Maori people.

15. The State party should finalize its review of its reservations relating to article 10 of the Covenant with a view to withdrawing them at the earliest possible date.

16. The State party should disseminate widely the text of its fourth periodic report, the written replies it provided to the list of issues drawn up by the Committee and, in particular, the present concluding observations.

17. The Committee draws the attention of the State party to the guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/Rev.1). The fifth periodic report should be prepared in accordance with those guidelines, with particular attention paid to the implementation of rights in practice. It should indicate the measures taken to give effect to these concluding observations. The fifth periodic report should be submitted by 1 August 2007.